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Katten Muchin Zavis Rosenman
575 Madison Avenue
New York, NY 10022-2585

MAILED

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Office of the Director
Group 3600

In re Application of
Shinichirou Harasawa et al.
Application No. 09/084,787
Filed: May 21, 1998
For: INPUT MONITORING SYSTEM FOR
OPTICAL AMPLIFYING REPEATER

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is a decision on the applicants' petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on April 15, 2003 and supplemented on July 11, 2003.

The petition is **GRANTED**.

A review of the file record indicates that an Office action was mailed to applicants on September 10, 2002. Since a response to the September 10, 2002 Office action was not received before the expiration of the six month statutory period for reply, the application was abandoned, although a Notice of abandonment has yet been mailed.

Applicants submit that the Office action was never received by applicants and provides copies of docket reports related to this particular case presumably to take advantage of the procedure outlined in 1156 O.G. 53 and MPEP 711.03(c) for withdrawing an abandonment in an application having a non-received Office correspondence.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of December 10, 2002. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Practitioner submits a statement that the above-noted Office action was not received by practitioner. Practitioner also attests to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered as being due was submitted on July 11, 2003. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions withdraw the abandonment, return the application to pending status and to redate and remail the Office action of September 10, 2002 based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.



Steven N. Meyers, Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868
Facsimile No.: (703) 605-0586

SNM/tpl: 7/11/03